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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Annabelle Begay,

10 Plaintiff,

11 v.

12 Office of Navajo and Hopi Indian
13 Relocation, an administrative agency of the
United States,

14 Defendant.

No. 3:20-cv-8057-DJH

ORDER

15 Pending before the Court is Plaintiff's Motion for Summary Judgment (Doc. 11)
16 and Defendant Office of Navajo and Hopi Indian Relocation's ("ONHIR") Cross-Motion
17 for Summary Judgment (Doc. 19). Plaintiff filed a Reply in support of her Motion and
18 Response to ONHIR's Cross-Motion for Summary Judgment (Doc. 21), and Defendant
19 filed a Reply in further support of its Cross-Motion for Summary Judgment (Doc. 22). Also
20 before the Court is Plaintiff's Motion to Strike (Doc. 13). Defendant filed a Response and
21 Objection to Plaintiff's Motion to Strike (Doc. 16), and Plaintiff filed a Reply in support
22 of her Motion to Strike (Doc. 18).

23 **I. Background**

24 This case arises from a denied claim for Navajo and Hopi Indian relocation benefits.
25 Plaintiff Annabelle Begay ("Ms. Begay" or "Plaintiff") is an enrolled member of the
26 Navajo Nation. (Doc. 1 at ¶ 5). She applied for relocation benefits on April 21, 2009. (*Id.*
27 at ¶ 16). The Office of Navajo and Hopi Indian Relocation ("ONHIR" or "Defendant")
28 denied Plaintiff's application on March 21, 2012, articulating its reason for the denial as:

1 “ONHIR records indicate that you and your father Roger Begay, Sr. moved off of the HPL
2 in 1979” before Plaintiff had attained head of household status. (Doc. 9 at 90; Doc. 1 at ¶
3 17). Plaintiff appealed ONHIR’s denial of relocation benefits. (Doc. 1 at ¶ 19). The
4 administrative hearing on Plaintiff’s appeal occurred on November 8, 2013. (*Id.* at ¶ 20).
5 Plaintiff and her father, Roger Begay, testified that they remained on Hopi Partitioned
6 Lands (“HPL”) until 1990, several years after Plaintiff attained head-of-household status
7 in 1982. (Doc. 1 at ¶ 20; Doc. 9 at 119; Doc. 11 at 6–7). Plaintiff and ONHIR submitted
8 Post-Hearing briefs to the Independent Hearing Officer (“IHO”) on December 12, 2013.
9 (Doc. 1 at ¶ 22). ONHIR submitted and cited to the following documents (“Disputed
10 Documents”) in its post-hearing brief: (1) the Roger Begay Affidavit; (2) transcript
11 portions from Roger Begay’s 1986 benefits hearing; and, (3) the Williams Affidavit. (Doc.
12 19 at 12–13).

13 The IHO upheld the denial of relocation benefits on January 10, 2014. (Doc. 1 at ¶
14 25). The IHO determined that Plaintiff and Roger Begay were not credible witnesses
15 because their testimonies contradicted Roger Begay’s own 1986 affidavit which stated that
16 Roger Begay’s family, including Plaintiff, permanently moved to Tuba City in 1979. (Doc.
17 9 at 12, 119). The IHO stated that Plaintiff’s testimony to the contrary had “no evidentiary
18 value and [was] an unreliable artifact about the family’s living situation from and after
19 1979.” (Doc. 1 at ¶ 26; Doc. 9 at 123). Thus, the IHO concluded that Plaintiff moved off
20 HPL prior to becoming head of household. (Doc. 1 at ¶ 25; Doc. 9 at 120–123). Therefore,
21 because Plaintiff was not a resident on HPL when she became head of household, the IHO
22 determined she was not eligible for relocation benefits. (Doc. 1 at ¶ 25).

23 Plaintiff is an enrolled member of the Navajo Nation. (Doc. 1 at ¶ 5). She was born
24 on December 8, 1960 to parents who lived in Coalmine Mesa, or the Howell Mesa area of
25 the Coalmine Chapter. (*Id.* at ¶ 7; Doc. 19 at 3). This area was later partitioned for the use
26 of the Hopi Indian tribe. (Doc. 1 at ¶ 7; *Sekaquaptewa v. MacDonald*, 626 F.2d 113 (9th
27 Cir. 1980). In Coalmine, Plaintiff lived with her family in a home made from railroad ties.
28 (Doc. 1 at ¶ 7; Doc. 9 at 6, 18–19). Plaintiff attended school in Tuba City grades 1 through

12. (Doc. 1 at ¶ 10; Doc. 8 at ¶ 10). Plaintiff's father also constructed a residence in Tuba City for use during inclement weather when Plaintiff and her siblings could not commute home from school. (Doc. 1 at ¶ 7; Doc. 12 at ¶ 14). Tuba City is located on Navajo Partition Land ("NPL"). *Sekaquaptewa* 626 F.2d at 113. Plaintiff graduated from high school in May of 1980. (Doc. 1 at ¶ 12). Following her graduation, Plaintiff babysat for relatives in Tuba City. *Id.* There are no tax records or documents showing any earnings from Plaintiff's babysitting. (Doc. 9 at 118; Doc. 19 at 3). In 1982, Plaintiff began working for the Navajo Tribe's Water Resources Department in Tuba City. (Doc. 1 at ¶ 13; Doc. 12 at ¶ 19). Her social security earnings statement indicates she earned \$3,008.00 in 1982 which is a sufficient income to support head of household status. (Doc. 1 at ¶ 13; Doc. 9 at 83, 90). Plaintiff was married in 1986. (Doc. 9 at 67). Plaintiff had her first child in 1991. *Id.*

Plaintiff's father, Roger Begay, applied for ONHIR relocation benefits and ONHIR initially denied his benefits application. (Doc. 1 at ¶ 8). In Roger Begay's 1986 appeal, he testified that he and his family permanently moved from Coalmine Chapter to Tuba City in 1979 after getting rid of his livestock in Coalmine. (Doc. 9 at 30). Affidavits from Nelson and Sally Williams supported Roger Begay's testimony. (*Id.* at 9). The IHO reversed ONHIR's denial of Roger Begay's benefits in August 1986. (Doc. 1 at ¶ 8). Roger Begay received his relocation home in 1990. (*Id.* at ¶ 7; Doc. 9 at 166).

Plaintiff's younger sister, Annette Begay, applied for relocation benefits and ONHIR initially denied her relocation benefits application. (Doc. 1 at ¶ 9). Annette appealed this decision. *Id.* In the 1988 appeal, Annette and Roger Begay testified that they continued to live in Coalmine after 1979 and currently resided there at the time of this appeal. (Doc. 9 at 141, 145; Doc. 11 at 16). In 1994, ONHIR granted her benefits application thus certifying that she remained on HPL lands until she attained head of household status. (Doc. 1 at ¶ 31; Doc. 9 at 136, 138, 150–151).

Plaintiff alleges that her family did not move from Coalmine to Tuba City in 1979, but rather argues she remained on HPL until 1990. (Doc. 1 at ¶ 16). Plaintiff's father, Roger Begay, also testified in Plaintiff's appeal that their family continued living in Coalmine

1 and kept livestock there until he received a relocation home in 1990, contradicting the
2 affidavit in his 1986 appeal. (Doc. 9 at 119; Doc. 12 at 7, 9; Doc. 19 at 4). In support of her
3 claim that her family remained in Coalmine, Plaintiff alleges that: (1) she rode the school
4 bus home to Coalmine until she graduated high school in 1980 (Doc. 1 at ¶¶ 10–12); (2)
5 she returned home to Coalmine on weekends when she babysat in Tuba City from 1980–
6 1981 (*Id.* at ¶ 12); and (3) she resided in Coalmine and commuted to and from Tuba City
7 when she worked for the Navajo Tribe Water Department in 1982 (*Id.* at ¶¶ 13–14).

8 Also before the Court is Plaintiff’s Motion to Strike (Doc. 13) material ONHIR cited
9 to in its post-hearing brief. It is disputed as to whether those documents are extra-record
10 evidence or whether the record was held open for additional supporting materials. At the
11 conclusion of Plaintiff’s appeal, the IHO held the record open for 14 days for Post-Hearing
12 Memoranda. (Doc. 12 at ¶ 29; Doc. 20 at ¶ 29). Plaintiff alleges that the IHO did not
13 continue to hold the record open after that time, thus the materials ONHIR submitted were
14 extra-record. (Doc. 11 at 7–8). ONHIR retorts that the IHO did not explicitly close the
15 record, rather both parties were given an extension to submit post-hearing briefs, which
16 both parties did by December 13, 2013; thus the matter was “held open” and the evidence
17 was properly admitted. (Doc. 19 at 5; Doc. 20 at ¶ 30). Plaintiff alleges that because this
18 new evidence was disclosed after the 14-day time frame, without Defendant’s request for
19 the IHO to keep the record open and without these documents being disclosed to Plaintiff’s
20 counsel, they were not made an official part of the record and could not be used by the
21 IHO. (Doc. 11 at 8–10; Doc. 13 at 6; Doc. 18 at 5). ONHIR contends that Plaintiff’s counsel
22 was aware of the documents. (Doc. 16 at 6–7; Doc. 19 at 14). Plaintiff also had the
23 opportunity to respond to this evidence post-trial when she submitted a Motion for
24 Reconsideration including several documents supporting her assertion that she remained
25 on HPL “beyond 1979.” (Doc. 1 at ¶ 28). The Court will consider these matters in turn.

26 **II. Discussion**

27 As an initial matter, the Court finds Plaintiff has not established grounds to strike
28 portions of the administrative record. Plaintiff invokes Federal Rule of Civil Procedure

1 12(f) to strike documents from the administrative record, however, rule 12(f) only permits
2 a court “to strike from a pleading.” Fed. R. Civ. P. 12(f). Furthermore, it is clear that
3 documents Plaintiff now seeks to strike were before ONHIR, and Plaintiff was aware of
4 their existence. Therefore, the motion to strike will be denied.

5 Plaintiff brings a Motion for Summary Judgment under Federal Rule of Civil
6 Procedure 56(c). (Doc. 11 at 1). She argues the Court should grant her Motion because the
7 IHO’s reliance on the Disputed Documents was arbitrary, capricious, and an abuse of
8 discretion for the following reasons: (1) ONHIR submitted the Disputed Documents after
9 the record was closed; (2) Plaintiff was deprived of an opportunity to explain
10 inconsistencies between the Disputed Documents and testimony given at her hearing; and
11 (3) collateral estoppel precluded ONHIR from litigating the issue of when Plaintiff moved
12 off the HPL because ONHIR granted Annette relocation benefits.

13 Defendant brings a Cross-Motion for Summary Judgment under Federal Rule of
14 Civil Procedure 56 and Local Rule of Civil Procedure 56.1. (Doc. 19 at 1). ONHIR argues
15 that the IHO’s reliance on the Disputed Documents was not arbitrary, capricious, and
16 prejudicial because (1) the Disputed Documents were submitted in a Post-Hearing brief
17 within the submission deadline, making it a proper part of the Administrative Record the
18 IHO could rely on; (2) Plaintiff was able to respond to the evidence in a Reconsideration
19 Motion and there is no regulation that Plaintiff should have been allowed to respond at her
20 hearing; and (3) because nonmutual collateral estoppel cannot be applied against the
21 government, ONHIR is not estopped from determining Plaintiff’s residency status.

22 **A. Legal Standards**

23 **a. Summary Judgment**

24 Summary judgment is generally appropriate when the evidence, viewed “in the light
25 most favorable to the non-moving party,” shows “that there is no genuine dispute as to any
26 material fact and the movant is entitled to judgment as a matter of law.” *Eisenberg v. Ins.*
27 *Co. of N. Am.*, 815 F.2d 1285, 1289 (9th Cir. 1987); Fed. R. Civ. P. 56(a). When the court
28 reviews an agency action however, “there are no disputed facts that the district court must

1 resolve” because the “administrative agency...is itself the finder of fact.” *Occidental Eng’g*
2 *Co. v. Immigration & Naturalization Serv.*, 753 F.2d 766, 769–770 (9th Cir. 1985). “[T]he
3 function of the district court is to determine whether or not as a matter of law the evidence
4 in the administrative record permitted the agency to make the decision it did.” *Id.* at 769.
5 The court thus utilizes summary judgment as “the appropriate mechanism for deciding the
6 legal question of whether the agency could reasonably have found the facts as it did.” *Id.*
7 at 770.

8 **b. Judicial Review of Agency Decisions**

9 The Administrative Procedure Act (“APA”) governs court review of agency actions.
10 5 U.S.C. § 706(2)(A); *Hopi Tribe v. Navajo Tribe*, 46 F.3d 908, 914 (9th Cir. 1995)
11 (“Unless Congress specifies otherwise, we review agency action under the Administrative
12 Procedure Act.”) In accordance with the APA, “the reviewing court can reverse only if the
13 agency action was arbitrary, capricious, an abuse of discretion, not in accordance with law,
14 or unsupported by substantial evidence.” *Bedoni v. Navajo-Hopi Indian Relocation*
15 *Commission*, 878 F.2d 1119, 1122 (9th Cir. 1989); *see* 5 U.S.C. § 706(2)(A); (2)(E). “In
16 applying that standard, the focal point for judicial review should be the administrative
17 record already in existence.” *Camp v. Pitts*, 411 U.S. 138, 142 (1973). An agency action is
18 only arbitrary and capricious if the agency:

19 Has relied on factors which Congress has not intended it to
20 consider, entirely failed to consider an important aspect of the
21 problem, offered an explanation for its decision that runs
22 counter to the evidence before the agency, or is so implausible
that it could not be ascribed to a difference in view or the
product of agency expertise.

23 *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).
24 Substantial evidence must support agency decisions; this is satisfied by “more than a
25 scintilla but less than a preponderance.” *Orteza v. Shalala*, 50 F.3d 748, 749 (9th Cir.
26 1995). Enough “relevant evidence” must be present that “a reasonable mind might accept
27 as adequate to support a conclusion.” *Information Providers’ Coalition for Defense of the*
28 *First Amendment v. FCC*, 928 F.2d 866, 870 (9th Cir. 1991). If the IHO fails to justify the

1 decision, the Court can overturn the agency decision for an abuse of discretion. *Motor*
2 *Vehicle Mfrs. Ass’n*, 463 U.S. at 48 (an agency “must cogently explain why it has exercised
3 its discretion in a given manner”). Still, the Court generally “sustain[s] an agency action if
4 the agency has articulated a rational connection between facts found and conclusions
5 made.” *Pac. Coast Fed’n of Fishermen’s Ass’ns v. U.S. Bureau of Reclamation*, 426 F.3d
6 1082, 1090 (9th Cir. 2005). The Court extends this deference because only the IHO
7 “observe[s] [a witness’s] tone and demeanor” and can “explore inconsistencies” or “decide
8 whether [a witness’s] testimony has...the ring of truth.” *Sarvia-Quintanilla v. INS*, 767 F.2d
9 1387, 1395 (9th Cir. 1985).

10 **c. Relocation Benefits under the Navajo and Hopi Land Settlement Act**

11 An individual qualifies for Relocation Benefits if: (1) they are a member of a tribe
12 residing on land not partitioned to their tribe, 25 C.F.R. § 700.147(a); and (2) the individual
13 became a “head of household” while residing on land partitioned to the other tribe. *Id.* §§
14 700.147(e), 700.69(a)(2), 700.69(c). Individuals cannot “receive separate benefits if it is
15 determined that they are members of a household which has received benefits.” 25 CFR §
16 700.147(d).

17 **i. Residency**

18 ONHIR regulations provide that “residence is established by proving that the head
19 of household and/or his/her immediate family were legal residents...on the lands
20 partitioned to the Tribe of which they are not members.” 25 C.F.R. § 700.97. ONHIR
21 clarified in the preamble to the regulation that “The term ‘residence’ in the final rule is
22 meant to be given its legal meaning...which requires an examination of a person’s intent
23 to reside combined with manifestations of that intent.” 49 Fed. Reg. 22, 227 (May 29,
24 1984). Further, ONHIR stipulated an inexhaustive list of various factors that would be
25 examined “by the Commission in assessing an applicants’ manifestations of intent to
26 maintain legal residence in the partitioned lands” including: “ownership of livestock,
27 Ownership of improvements, Grazing Permits, Livestock sales receipts, Homesite leases,
28 Public health records, Medical and Hospital records, including those of Medicinemen,

1 Trading Post records, School records, Military records, Employment records, Mailing
2 Address records, Banking records, Driver's license records, Voting records-tribal and
3 county, Home ownership or rental off the disputed area, BIA Census Data, Information
4 obtained by Certification Field Investigation, Social Security Administration records,
5 Marital records, Court records, Records of Birth, Joint Use Area Roster, any other relevant
6 data." *Id.* at 278.

7 **ii. Head of Household**

8 ONHIR regulations define a household as: "[a] single person who at the time his/her
9 residence on land partitioned to the Tribe of which he/she is not a member actually
10 maintained and supported him/herself or was legally married and is now legally divorced."
11 25 C.F.R. § 700.69(a)(2). "Head of household" is further defined as "that individual who
12 speaks on behalf of the members of the household and who is designated by the household
13 members to act as such." *Id.* at (b). Individuals thus attain "Head of Household" status
14 when they (i) marry, (ii) have a child, or (iii) earn sufficient income to "actually maintain
15 and support" themselves. *Id.* at (a)(1) and (a)(2). An amount of \$1,300 or more is a
16 sufficient income to achieve self-supporting status. *O'Daniel v. Office of Navajo Hopi*
17 *Indian Relocation*, No. 07-354-PCT-MHM, 2008 WL 4277899, at *5 (D. Ariz. Sept. 18,
18 2008) ("ONHIR policy requires that the applicant establish that he or she earned \$1,300.00
19 per year in income"); (Doc. 9 at 90).

20 **B. Analysis**

21 The question before the Court is whether the IHO's use of ONHIR's post-
22 evidentiary hearing documents in determining that Plaintiff was not a resident on HPL
23 when she became head of household was arbitrary, capricious, and unsupported by
24 substantial evidence, such that this Court should grant summary judgment in Plaintiff's
25 favor. Plaintiff argues that IHO's reliance on the Disputed Documents was arbitrary,
26 capricious, and an abuse of discretion for three reasons: (1) ONHIR submitted the Disputed
27 Documents after the record was closed; (2) Plaintiff was deprived of an opportunity to
28 explain inconsistencies between the Disputed Documents and testimony given at her

1 hearing; and (3) collateral estoppel precluded ONHIR from litigating the issue of when
2 Plaintiff moved off the HPL because ONHIR granted Annette Begay relocation benefits.
3 The Court will address these arguments in turn.

4 First, the Court finds that the IHO did not close the record prior to ONHIR's
5 submission of the Disputed Documents. Under 25 C.F.R. § 700.313, the IHO is permitted
6 to "[r]eceive relevant evidence." 25 C.F.R. § 700.313. Although the statute indicates the
7 IHO can "[h]old the record open for submission of evidence no longer than fourteen days
8 after completion of the hearings," the IHO can extend this deadline "for good cause
9 shown." *Id.* It is apparent that both Plaintiff and Defendant submitted post-hearing briefs
10 on December 12, 2013, well after the fourteen-day time window at the conclusion of
11 Plaintiff's hearing, indicating the IHO gave an extension. (Doc. 1 at ¶ 22). Additionally,
12 had the IHO closed the record, he would not have accepted either of these briefs, or
13 considered the Disputed Documents. When ONHIR cited and submitted these documents
14 in its post-hearing brief, the documents thus became part of the "exclusive record" which
15 includes "all papers and requests filed in the proceeding." 5 U.S.C. § 556(e). As part of the
16 record, the IHO could thus make determinations based upon this substantial evidence. And,
17 Plaintiff's own brief was filed with the IHO on the same day. (Doc. 1 at ¶ 22). Therefore,
18 the Court does not find the IHO's use of this material to be arbitrary, capricious, or an
19 abuse of discretion.

20 Second, the Court finds that Plaintiff was not deprived of an opportunity to explain
21 inconsistencies between the Disputed Documents and testimony given at Plaintiff's
22 hearing. Plaintiff's counsel was aware of and had access to the Disputed Documents prior
23 to the hearing. (Doc. 21 at 10). Additionally, following the post-briefing submissions,
24 Plaintiff submitted a Motion for Reconsideration including several documents supporting
25 her assertion that she remained on HPL "beyond 1979." (Doc. 1 at ¶ 28). Furthermore,
26 Plaintiff's assertion that ONHIR's evidence must have been presented pre-hearing is belied
27 by the fact that ONHIR policy allows for the IHO to hold the record open for the
28 submission of evidence post-hearing. C.F.R. §700.313. Because Plaintiff did respond to

1 the additional evidence by submitting a Motion for Reconsideration, she thus was not
2 deprived of the opportunity to respond to ONHIR's evidence.

3 Third, the Court does not find that Annette Begay's receipt of relocation benefits
4 in any way determines that Plaintiff is entitled to relocation benefits. Plaintiff cannot use
5 the doctrine of nonmutual collateral estoppel (issue preclusion) against the government.
6 *United States v. Mendoza*, 464 U.S. 154 (1984) ("The United States may not be collaterally
7 estopped on an issue such as the one involved here, adjudicated against it in an earlier
8 lawsuit brought by a different party"). Plaintiff cannot use ONHIR's determination of her
9 sister's residency, to estop ONHIR from making her residency determination. ONHIR's
10 "obligation is only that the agency applies the law consistently to cases with similar
11 material facts; it does not require the agency find the same facts for different parties, in
12 different proceedings, and based on different evidence." *Daw v. Office of Navajo & Hopi*
13 *Indian Relocation*, No. CV-19-08212-PCT-SMB, 2020 WL 5632121, at *4 (D. Ariz. Sep.
14 18, 2020) (citing *Teamsters Local Union 769 v. NLRB*, 532 F.2d 1385, 1392 (D.C. Cir.
15 1976)). After hearing witness testimony and reviewing all evidence on record, the IHO
16 determined Plaintiff moved off HPL in 1979. His relocation benefits determination in
17 Annette Begay's case, after considering other testimony and evidence, does not make his
18 determination here improper. Moreover, the IHO here was presented with additional and
19 conflicting evidence which ultimately supports his conclusions.

20 Therefore, the Court finds that the ONHIR did not abuse its discretion, or arbitrarily,
21 or capriciously deny Plaintiff relocation benefits. Here, the IHO determined Plaintiff's
22 residency status after evaluating witness testimony on record. The IHO explained that he
23 found Roger Begay's and Plaintiff's appeal testimony to be inconsistent with Roger
24 Begay's prior statements at his hearing and in his affidavit. (Doc. 9 at 122). There were
25 enough contradictory facts for the IHO to rationally conclude that statements made by
26 Plaintiff and Roger Begay during Plaintiff's appeal were not credible. Those contrary
27 records indicated that Plaintiff moved from Coalmine to Tuba City in 1979, three years
28 before becoming self-supporting head of household. *Id.* Therefore, the IHO had sufficient

1 record evidence, and a nonarbitrary reason to find Plaintiff and Roger Begay's testimony
2 uncredible as it related to whether Plaintiff was a resident of HPL lands when she attained
3 head of household status. Therefore, the Court must give deference to the IHO's credibility
4 determinations. *Sarvia-Quintanilla*, 767 F.2d at 1395. Because the role of this Court is only
5 to determine whether the evidence on record permitted the IHO to make his decision, it
6 finds that the evidence was sufficient to support the IHO's determination that Plaintiff was
7 not a resident on HPL when she became a head of household. *Occidental Eng'g Co.*, 753
8 F.2d at 769.

9 **III. Conclusion**

10 The Court finds that IHO's use of ONHIR's post-evidentiary hearing documents to
11 determine that Plaintiff was not residing on HPL at the time she attained head of household
12 status was not arbitrary, capricious, or an abuse of discretion. Substantial evidence on the
13 record supported the IHO's determination as to Plaintiff's status. Therefore, the Court will
14 **deny** Plaintiffs' Motion for Summary Judgment and **grant** Defendants' Cross-Motion for
15 Summary Judgment.


16 Accordingly,

17 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Summary Judgment (Doc.
18 11) is **denied** and Defendant's Cross-Motion for Summary Judgment (Doc. 19) is **granted**.

19 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Strike (Doc. 13) is **denied**.

20 **IT IS FINALLY ORDERED** that judgment shall be entered for Defendant and this
21 matter shall be closed.

22 Dated this 7th day of July, 2021.

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25 
26 Honorable Diane J. Humetewa
27 United States District Judge
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